

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

PATRICK EDWARD SMRZ,

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CIV 04-4015

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Plaintiff,

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-vs-

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THE PEOPLE OF THE STATE OF
SOUTH DAKOTA,

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Defendant.

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to "remand this case back to the South Dakota District Court. . ." (*Id.*) He named as defendants John Doe, Jane Doe, and Tammy Harper, employees of the Department of South Dakota Health and Welfare. Smrz did not explain how the individuals he named as defendants were responsible for failing to give him timely notice and an opportunity to be heard at the hearing terminating his parental rights, or how they were responsible for any other perceived constitutional violations. In addition, his Amended Complaint was silent as to the constitutional violations that Smrz had alleged in his initial Complaint. Finding the Amended Complaint insufficient to state a claim under 28 U.S.C. § 1915(e)(2)(B), the case was dismissed. (Doc. 16.) Subsequently, Smrz filed a Motion for Relief from Judgment. (Doc. 19.) That motion was denied by Order issued on November 10, 2004. (Doc. 25.) On appeal, the Eighth Circuit affirmed this Court's decision. (Doc. 30.) Seven months later, Smrz filed the pending motion for a declaratory judgment.

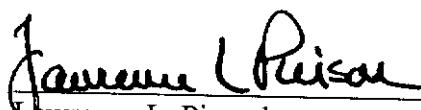
DISCUSSION

In his motion for declaratory relief, Smrz is asking the Court to declare void the state court proceedings that terminated his parental rights. This is another of way of seeking essentially the same relief which was denied by earlier Orders of this Court. Apparently Smrz came to realize that such relief cannot be granted here, and he appropriately filed the motion to withdraw the motion for declaratory relief. Accordingly,

IT IS ORDERED that the Motion for A Declaratory Judgment (doc. 33) is denied, and the Motion to Voluntarily Withdraw Motion (doc. 38) is granted.

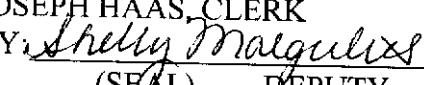
Dated this 4th day of January, 2007.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK
BY: 
(SEAL) DEPUTY